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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of FREDRIC GOLDSTEIN Docket no.: N898 (amended)
Serial No.: 09/340,303 Examiner: KIM, EUGENE LEE
Filing Date: 06/28/99 Art Unit: 3721

#30/dpx
5-18-04
Pet ne
Aband.

Title: RIBBON CURLING AND SHREDDING DEVICE

Commissioner of Patents and Trademarks, Washington, DC 20231

Petition to Withdraw the Holding of Abandonment

The Applicant hereby petitions under 37 C.F.R. 1.181 for a Withdrawal of the Holding of Abandonment of the instant application. Enclosed please find in support of this petition a sworn Declaration of the Applicant/Inventor Fredric Goldstein (Exhibit A) and the Declaration of the Attorney of Record Norman Friedland (Exhibit B), as well as his invoice confirming the timely preparation (Exhibit C) and the supporting August 26, 2003 time sheet of Mr. Friedland (Exhibit D) which lists the application's file no. N898 and Goldstein and under work done: "Convert text for amend- .3, prepare ext of time- .3, payment to PTO (\$55).

This application has encountered more than one glitch since its filing nearly five years ago. It was the subject of another petition regarding the recovery of the original filing date of June 29, 1999 for which the petition was successful. It also

was subject to an Office Action for long abandoned claims, after which the correct pending claims were then applied to the Office Action.

In another recent complication, which is the subject of this petition, the amendment to the Examiner's Office Action dated April 25, 2003 was either lost in the mail or was misplaced or misfiled at the PTO. Applicant believes that the facts of this matter, as attested to in each of the Declarations, show that the application was never abandoned but simply Applicant's reply to the last Office Action somehow was lost or mislaid by the Post Office or lost or mislaid by the PTO after having been timely mailed by Applicant's attorney of record. As the term "abandonment" is defined in large part as having failed to file a timely reply to an Office Action, Applicant is of the opinion that such abandonment has not occurred since a timely reply was in fact mailed to the PTO. Pursuant to the statute 35 U.S.C. §133, the failure which would lead to abandonment applies specifically to the prosecution of the application. Applicant believes that the two Declarations respectfully submitted herein show that the Applicant has in fact prosecuted the application by creating, and mailing, a timely and proper reply but due to an unavoidable delay wholly outside the control (or knowledge) of Applicant, the reply never came before the Examiner for consideration. Applicant's first awareness of the lost reply came during contact with the Examiner in January 2004 upon enquiring about the status of the application.

Applicant's attorney of record had then faxed a confirmation copy of the reply in question to the Examiner on January 20, 2004 at the Examiner's request pursuant to a phone conversation. The reply then is in the possession of the PTO and

ready for consideration. The Applicant would like to take this time to thank Examiner Kim for his patience in this matter.

Applicant respectfully requests withdrawal of the Holding of Abandonment, the application reinstated and judged *nunc pro tunc* as properly being active as of the date of its postal mailing in late August, 2003 (well within the six month deadline set out under 37 CFR 1.135(a)).

Respectfully submitted,



Fredric Goldstein April 12, 2004

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Encl: -Declaration of Fredric Goldstein
-Declaration of Norman Friedland
-Invoice Friedland to Goldstein showing August 26, 2003 billing
-August 26, 2003 Time Sheet of Friedland's activity on that date
showing work as listed in the aforementioned invoice